

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA	:	
	:	
Plaintiff,	:	Criminal Action
	:	No. 1:19-cr-59
v.	:	
	:	
DANIEL EVERETTE HALE,	:	July 27, 2021
	:	9:55 a.m.
	:	
Defendant.	:	Washington, D.C.
	:	
.....	:	

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE LIAM O'GRADY,  
UNITED STATES DISTRICT COURT JUDGE

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MORNING SESSION, JULY 27, 2021

(9:57 a.m.)

COURTROOM CLERK: The Court calls *United States versus Daniel Everett Hale*, Case Number 1:19-CR-59.

May I have appearances, please, first for the government.

MR. KROMBERG: Good morning, Your Honor. Gordon Kromberg, Heather Schmidt and Alex Berrang for the United States. With us at counsel table is FBI Special Agent Pino.

THE COURT: All right.

MR. RICHMAN: And good morning, Your Honor. Todd Richman and Cadence Mertz for Mr. Hale. Mr. Hale is not yet present.

THE COURT: Yeah. We're going to break before the sentencing, but good morning, Mr. Hale. Come in, please.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: All right. I've called the case preliminarily because there was an issue as to whether or not counsel wanted the opportunity to go into any of the classified information, and if so, we would have to clear the courtroom and secure it. Before that occurred, I'm happy to do it either way you want to do it, but I wanted to know your position.

MR. RICHMAN: Well, Your Honor, it was not our intention, but following the government's filing yesterday, which we haven't had any opportunity to respond to, we do think at least briefly that we need an opportunity to respond.

THE COURT: All right. All right. Then we'll -- that's

1 fine with me. We'll certainly -- you should have that  
2 opportunity, and we'll take a break. We'll clear the courtroom  
3 because we'll have to do some security measures inside the  
4 courtroom before we hold that closed hearing, and then we'll open  
5 up after that for the sentencing. Mr. Kromberg.

6 MR. KROMBERG: Your Honor, I was wondering whether it  
7 might work to go into the -- some of the other parts of the  
8 sentencing, and when we get to the dispute over facts, we could  
9 break at that point, but essentially there's a dispute over the  
10 facts, and that's what we would talk about in the closed session,  
11 but there is -- there are many other things that are out there,  
12 and it depends in what order the Court wants to do it. For  
13 example, say the -- typically, you say -- the Court asks, are the  
14 Guideline factors accurately assessed? And I -- my expectation  
15 is that there would be -- there might be a disagreement on the  
16 acceptance of responsibility, which goes into the facts. So, I  
17 don't know whether it's best to go first on the facts or get to  
18 the facts later.

19 THE COURT: Well, you know that the first question and  
20 first issue I address in every sentencing is the Guideline  
21 calculation, so I think we can deal with that then, and I  
22 certainly don't want to break multiple times. So let's do the  
23 best we can to deal with the fact issue up front, and then we'll  
24 open back up, all right. Okay. All right. We're in recess.

25 (Thereupon, a recess in the proceedings began at 10:01

1 a.m.)

2 (Classified matter held.)

3  
4 **MORNING SESSION, JULY 27, 2021**

5 (11:25 a.m.)

6 THE COURT: All right. We have established the Guideline  
7 range, which is 87 to 108 months and one to three years of  
8 supervised release. I've indicated that Mr. Hale does not have  
9 the ability to pay a fine. He has received acceptance of  
10 responsibility for having pled guilty and identified the  
11 Statement of Facts information, and also that the Court will  
12 amend condition number 13 to reflect that the Court will notify  
13 third parties of risks occasioned by his employment. All right.

14 Does either party intend to call any witnesses in the  
15 case? Mr. Kromberg?

16 MR. KROMBERG: No, Your Honor.

17 THE COURT: All right. Mr. Richman?

18 MR. RICHMAN: No, Your Honor.

19 THE COURT: All right. I've read the parties' submissions  
20 and the supplemental that has been filed. I have read many dozen  
21 letters in support of Mr. Hale and their position from members of  
22 the community, former military personnel, journalists, and I'll  
23 hear anything that the government would like to say at this time.  
24 Mr. Kromberg.

25 MR. KROMBERG: Thank you, Your Honor. The government said

1 most of what could be said in the pleadings, and I'm not going to  
2 say it again, despite the temptation, but I'm going to not do it.  
3 But, Judge, in this case what the defendant did was premeditated  
4 in that he joined NGA for the purpose of obtaining information  
5 for the purpose of leaking it.

6 He didn't just steal the information once, and it wasn't  
7 just one document, but it was a number of different documents on  
8 seven different dates over a four-month period.

9 So, in calculating an appropriate sentence for someone who  
10 has done this, I think it's appropriate to say, well, what is the  
11 appropriate sentence had the defendant stole merely one document,  
12 one secret document and had he retained that one secret document?  
13 Would that sentence then be enhanced by giving it to a reporter?  
14 Would that sentence be enhanced if it was a top secret document?  
15 And once we have that, what sentence would it be for doing six  
16 documents on February 28th, including top secret, and then giving  
17 it to the reporter, and how would that be enhanced for the  
18 documents that were stolen in April and in May and that were  
19 given to the reporter?

20 So I think the punishment that Mr. Hale should receive is  
21 what's appropriate for stealing, for retaining, and for giving to  
22 the reporter, the secret documents and the top secret documents,  
23 and Document L, which was not a -- which was not a secret or top  
24 secret document.

25 And in making the calculation, the Court should not allow

1 Hale's excuses to mask the significance of what he did.

2 The information he stole turned up in a publication put  
3 out by ISIS to be used by terrorists all over the world.

4 That may not have been -- I mean, I'm sure -- I'm sure it  
5 wasn't Mr. Hale's intention to support ISIS, but that's what he  
6 did. In his counsel's words, he used a bludgeon when he should  
7 have used a scalpel. Even using a scalpel would have been  
8 illegal, but, in fact, he used a bludgeon.

9 A substantial sentence is needed here as Mr. Hale  
10 repeatedly broke his repeated promises to protect classified  
11 information. Only a significant term of imprisonment can  
12 adequately promote respect for the law, reflect the seriousness  
13 of the offense, and, most importantly in this case, provide some  
14 deterrence to other people who may be tempted to do the same  
15 thing. Thank you, Judge.

16 THE COURT: All right. Thank you, Mr. Kromberg.

17 Mr. Richman.

18 MR. RICHMAN: Thank you, Your Honor. We, as the Court is  
19 aware, we're asking for a sentence of 12 to 18 months. We think  
20 that's supported by not only the other cases we've cited but all  
21 the purposes of sentencing, and I know the Court has read a lot.  
22 I am really going to try not to just cover all of that. I know  
23 the Court read everything and noted also the report from  
24 Dr. Lynch, and I would -- but what I would like to do is merely  
25 respond to a few arguments that the government has made, and then

1 I have a few other points I would like to make.

2 THE COURT: Certainly.

3 MR. RICHMAN: When I read the government's sentencing memo  
4 and I listened to the government today, it strikes me that the  
5 government feels this need to build up this strawman, this  
6 caricature of Mr. Hale, and they won't -- they simply can't  
7 believe that his reason for committing the offense is what he  
8 said it was, following his conscience, that it was driven by a  
9 deep need to sort of atone for and to make public things that he  
10 thought were wrong. But there's just nothing -- there is an  
11 extraordinary amount of evidence showing that Mr. Hale is telling  
12 the truth when he explains why he did what he did. Perhaps what  
13 he disclosed was not as finely calibrated as it could have been  
14 to make the point he wanted to make. That has nothing to do with  
15 what his motivation was. The fact is the Court has read the  
16 lengthy report from Dr. Lynch. The Court has read Mr. Hale's  
17 letter. The Court has read the many, many letters from those who  
18 know him talking about what his motivation was, and it's that he  
19 followed his conscience.

20 The government's alternative reality, they use words like  
21 it was because of his vanity, it was because he was trying to  
22 curry favor with a reporter. We've got seven years of evidence  
23 since this occurred, five years of which Mr. Hale was totally  
24 anonymous. He wasn't named until the government charged him.

25 What was he doing to curry favor with the reporter? Did



1 he try to use it to try to get a job with the reporter in those  
2 five years? Did he become a big commentator on network TV about  
3 national security issues or about the drone program? He didn't  
4 do any of that. He didn't do this out of vanity. He didn't do  
5 it to curry favor with the reporter. There's just absolutely  
6 nothing to suggest that he did it for self-aggrandizement. He  
7 didn't seek money. He didn't do any of those things. He lived  
8 anonymously. And, as the Court can see, he's really deteriorated  
9 under the weight of this case. When he was arrested, he had  
10 finally found some stability living as a dishwasher in Nashville  
11 at a restaurant. None of that is consistent with this whole  
12 caricature that the government has portrayed, that somebody did  
13 this out of vanity or to seek adulation from the public. It's  
14 just made up, Your Honor.

15 The government's only evidence that they used to support  
16 that whole theory is these, you know, late night texts to a girl  
17 he was seeing or he says "I would like to be a reporter" or  
18 things like that.

19 It's just -- it's just made up to go from that to then  
20 completely say that everything that Mr. Hale said about why he  
21 committed this is false, and there was really just this self-  
22 centered attempt to, I don't know, make himself something he  
23 wasn't. He just -- there's nothing in the record to support  
24 that, and the fact that the government goes to such great lengths  
25 seems to suggest that they agree, if his motivation was following

1 his conscience, that that is somewhat mitigating as compared to  
2 other espionage act cases, and we submit it is. It doesn't make  
3 it not a crime, but it's mitigating, as compared to some other  
4 cases, and we think it's something the Court should consider.

5 Now, the same goes for this claim that he premeditated  
6 this and he sought the job at the NGA just so he could commit  
7 this offense. That could not be further from the truth. There  
8 are several things in the record that can show that to the Court.

9 First of all, if he premeditated this, when he was in the  
10 Air Force, he had access then. He was in intelligence. He had  
11 access. He had no way of knowing if he would have access when he  
12 left. Even if he sought a job in the intelligence community, he  
13 had no idea of knowing what type of access he had.

14 In fact, that job at Leidos he got because he had given  
15 his résumé to his landlord at the time who was his former CO. He  
16 didn't even know the landlord had given it to someone at Leidos.  
17 He got a call offering him this job. When he took it, he knew it  
18 was just doing maps, unclassified maps relating to China. He had  
19 no idea he would even have what's called a Hi-Fi computer,  
20 meaning a computer that allows him access to high level  
21 classified information. He took that job having no idea he would  
22 even have that access.

23 And the government makes much of his résumé, the goal  
24 written in his résumé. That's what he was counseled in his  
25 pre-separation counseling before he left the Air Force. You

1 know, you've been in intelligence, this is the kind of thing you  
2 can pursue, and they gave him that exact language that the  
3 government cites to put in his résumé.

4 So, if he had planned, before leaving the Air Force, to do  
5 this, why would he have not used the access he had then, and why  
6 would he have waited to a time when he didn't know if he would  
7 have access again?

8 In addition to all of that, in addition to all those  
9 logical reasons why the Court can see he didn't premeditate it,  
10 Mr. Hale has told the Court exactly when he made the decision to  
11 commit the offense. It's in his letter. He explains the moment  
12 that he decided that just speaking generally about the drone  
13 program, as he had already done, was not enough, and he felt this  
14 deep seeded need to tell more and to explain to the public what  
15 was happening in a way -- the only way he could come up with to  
16 do so was to commit the offense. He admits it was illegal. He  
17 knew it was when he did it, but that's when he made the decision,  
18 and the Court should credit that, not only because it's  
19 consistent with all the evidence, but Mr. Hale, unlike almost all  
20 the defendants who are charged with these crimes and all the  
21 comparison cases we've cited, he hasn't -- didn't have a separate  
22 charge for lying to the government or for obstructing an  
23 investigation. He didn't get an enhancement for obstructing an  
24 investigation. Almost all these other cases did. And so the  
25 government just says he's lying about saying when he came up with

1 the idea to commit this, he actually premeditated that. They  
2 have no evidence that he's lying. They don't have any history of  
3 him lying about committing this offense, but they just want the  
4 Court to just throw all that out and assume he's not telling the  
5 truth about when he decided to commit the offense. It wasn't  
6 premeditated. It had to do with what I call this perfect storm  
7 that occurred with Mr. Hale shortly after he left the military,  
8 in that time when he was processing what he had been through.

9 The fact is he -- Mr. Hale even came into the military  
10 with -- unfortunately, with a very difficult background and  
11 significant -- and a significant mental health history. It  
12 doesn't excuse the offense, but it explains how we got to this  
13 perfect storm in 2014. He had a very difficult upbringing. He  
14 was poor. He was in an abusive household with a very strict  
15 version of religion enforced in that household, sometimes in  
16 violence. In fact, apparently very often with violence. That's  
17 how he -- and he had been hospitalized. There were mental health  
18 diagnoses before he came to the military, and then he gets to the  
19 military in 2009, essentially because he'd always been taught  
20 that the military is a way to serve your country and a way to  
21 better yourself and maybe open up opportunities that wouldn't  
22 have been available, and Mr. Hale didn't have a lot of  
23 opportunities and chose to enlist in the military at the height  
24 of two wars.

25 Then, early on in his military career before he was put in

1 Afghanistan, the military diagnosed him with these very serious  
2 mental health conditions. They treated him for them, and for  
3 some reason they sent him to work in the drone program two years  
4 later. That type of work, it's been known for a long time that  
5 exposure to violence and to conduct that a person might think  
6 conflicts with their own moral beliefs is something that causes  
7 PTSD and causes mental health problems, sometimes that a person  
8 deals with for the rest of their life.

9 In this case, Mr. Hale already had a lot of these mental  
10 health problems. They were exacerbated by working in the drone  
11 program. He probably never should have been sent there, but the  
12 military knew of his diagnoses and sent him there.

13 Those things clearly exacerbated his underlying mental  
14 health issues. He -- in addition to the PTSD, he already had  
15 Dr. Lynch in the VA who said that he has PTSD from his  
16 experiences there.

17 After leaving the military, he did want to be a reporter.  
18 He wanted to seek education to do that. He took this job for a  
19 short time at Leidos in-between while he was waiting to go to  
20 school, but this experience continued to gnaw at him. There is  
21 no question that it was occurring. Mr. Hale was dealing with  
22 what -- it's not his words, it's the VA's terminology -- moral  
23 injury from having engaged in conduct that he believes was  
24 contrary to his very strict views of what's right and wrong. He  
25 believed he was participating in killings of civilians where the

1 government, A, had insufficient information about who they were  
2 killing, and, B, was improperly classifying a lot of those killed  
3 as not collateral damage but as combatants, and that ate at him,  
4 and that's now, of course, well-established, not only that that  
5 happens from those who participate in war, but particularly the  
6 drone program.

7 As Dr. Lynch explains, the military wasn't doing a very  
8 good job back in 2013 at recognizing that, particularly with  
9 people involved in the drone program, but they've since improved  
10 and they've begun to recognize it and treat it much more than  
11 they were back then. But Mr. Hale didn't get any of that. He  
12 was just released and told to write up a résumé to go work as a  
13 government contractor. And this, as I said, continued to gnaw at  
14 him, and this is not an unusual thing.

15 Mr. Hale has received, as the Court alluded to, lots of  
16 support from the veteran community because -- from veterans  
17 themselves and from relatives of veterans because they've seen  
18 their own family members or themselves go through this sort of  
19 moral reckoning after returning from engaging in this sort of  
20 conduct.

21 Now, not all of them do what Mr. Hale did. Mr. Hale  
22 accepts responsibility for having broken the law -- he pleaded  
23 guilty -- but it's relevant to how he got there. Not all of them  
24 had the perfect storm of events leading up to what they did  
25 either. But that's how -- that's the sequence of events that led

1 to the offense.

2 And lastly, Your Honor, I would like to talk briefly about  
3 these comparison cases. A couple things. First, of course,  
4 particularly when you get outside of this district, the cases are  
5 all over the map, and it's hard to make any sense of them.  
6 General Petraeus, of course, that was some of the most sensitive  
7 information that could ever be disclosed. He just carelessly  
8 left it in his house and gave it to his biographer, and he got a  
9 misdemeanor.

10 Others who simply retained information in their home that  
11 were low-level employees have gotten, as the government points  
12 out, as long as nine years just for keeping it in their basement.  
13 Again, this is all outside of this district.

14 Now, those cases where people got those kinds of sentences  
15 were either before *Booker* when the Guidelines were mandatory or  
16 very shortly after *Booker*, and we don't know all the facts of the  
17 cases, but the point is, when you look at the cases in this  
18 district, there's a lot more consistency.

19 There's not only Mr. Sterling, a sentence that the  
20 government criticizes, but Mr. Kiriakou, a sentence the  
21 government agreed to, which is a lower sentence. They criticized  
22 the *Sterling* sentence. They criticized Judge Brinkema for that  
23 sentence not accomplishing deterrence.

24 Then they get another defendant committing a similar  
25 offense with a higher Guideline range than Mr. Hale who

1 obstructed the investigation, and they agreed to a 30-month  
2 sentence in that case.

3 Now they say that the sort of longer sentence imposed in  
4 *Sterling* was too short to accomplish deterrence, so Your Honor  
5 has to do that on Mr. Hale, even though they agreed to a lower  
6 sentence in a case after *Sterling* for a person with a higher  
7 Guideline range than Mr. Hale. It doesn't make any sense. The  
8 Government points to what they say are the two most recent cases  
9 involving disclosure. They're not the two most recent. The most  
10 recent is more recent than either of those. It's from this  
11 district, the *Frese* case, which was more recent than either of  
12 those, and received a 30-month sentence as well.

13 Now, there was a 5K in that case, but it started with a  
14 Guideline range of 50 percent higher than Mr. Hale. So, even  
15 with a 5K, going all the way down to a 30-month sentence, is  
16 dramatically below the Guidelines.

17 But the government's agreement to these lower sentences  
18 isn't just from Kiriakou, it's happened repeatedly. In the *Kim*  
19 case in D.C. they agreed to 13 months, and that was a high-level  
20 State Department employee disclosing top secret and SCI  
21 information.

22 Of course, we already talked about Mr. Petraeus. They  
23 agreed to a misdemeanor. General Cartwright, the executive  
24 branch determined he shouldn't even be prosecuted. Scooter  
25 Libby, the executive branch determined no time in prison was



1 necessary. Some of those weren't the DOJ, but they were all the  
2 executive branch.

3 So, to do all of that and agree to 30 months and ask the  
4 Court to impose 30 months in Kiriakou and ask this Court to  
5 impose 48 months for Mr. Schriver, whose offense, even though it  
6 wasn't completed, was a categorically worse offense. He  
7 conspired with an adversarial government for three years to try  
8 to steal classified information, and they agreed to a four-year  
9 sentence in that case before Your Honor.

10 So, for them to agree to all of those sentences and then  
11 say, but, you know, the 42 months given to Sterling was way too  
12 low to accomplish deterrence, you need to now accomplish  
13 deterrence on Mr. Hale's crime, is just not fair.

14 The government has not been consistent in these cases, but  
15 we submit that when you look at the cases in this court where  
16 people who have leaked to the media have gotten between 30 and 42  
17 months, all of which we believe include more aggravated conduct  
18 than is present here and don't involve some of the mitigation  
19 present here in terms of Mr. Hale's military service and the way  
20 that military service exacerbated underlying mental health  
21 conditions and contributed to the offense conduct.

22 So, all of those things put together, we would submit,  
23 suggest a lower sentence on these facts, and we do think that 12  
24 to 18 months is sufficient, and that giving a sentence longer  
25 than imposed in those cases would create unwarranted disparities.

1 So I would ask the Court to impose a sentence no longer than 18  
2 months.

3 THE COURT: All right. Thank you, Mr. Richman. Do you  
4 want to reply, at least to the disparate argument?

5 MR. KROMBERG: Just for a minute, Judge. Mr. Richman said  
6 that Mr. Hale was living anonymously. Well, that might have been  
7 because his house was searched in August of 2014, his last day of  
8 work at NGA, so he knew that we had some information about him at  
9 that point. And he didn't live that anonymously because he did  
10 appear in a movie, the National Bird movie, where he appeared to  
11 be proud of being a leaker.

12 As far as whether this case is how it stands on the  
13 spectrum, I think Mr. Richman pointed out that we make an  
14 individualized assessment. I wasn't involved in the *Kiriakou*  
15 case, but I'm confident that the reason that the government made  
16 the recommendation it did in *Kiriakou* is because of the facts of  
17 that case, and I think that Mr. Richman should accept that the  
18 reason that the government is asking for a significant sentence  
19 in this case is because of the facts of this case.

20 In this case, Hale did not in any way add to the public  
21 debate about how we fight wars. The only thing he accomplished  
22 was to endanger those who were doing the fighting. Thank you.

23 THE COURT: All right. Thank you. Mr. Hale, please come  
24 to the podium, sir. I've read your letter, of course, and we  
25 have spoken many times over the last year or more, and I'll hear

1 anything that you would like to say that you may have, with the  
2 advice of counsel.

3 You pled guilty, but you may have certain rights to appeal  
4 the sentence that I impose or other matters that were done  
5 pretrial, so speak with your counsel about that. And you must  
6 file any appeal in a timely fashion, as Mr. Richman or Ms. Mertz  
7 will indicate, but I'll hear anything that you would like to say  
8 at this time, sir.

9 THE DEFENDANT: Your Honor, I have written here  
10 approximately six pages of -- I guess you would call it a speech  
11 that I would like to give to the Court, if you will permit me to.

12 THE COURT: Absolutely. Go ahead.

13 THE DEFENDANT: Well, first, if I may ask my counsel to  
14 please take a seat so that they can -- if that's all right.

15 (Counsel continued to stand.)

16 THE DEFENDANT: Okay. I'm sorry. I feel uncomfortable  
17 with them standing behind me, if it's all right. I just wanted  
18 to open up with a thank you to the paralegals, social workers, in  
19 terms of the Federal Public Defender's Office, for their tireless  
20 work on my behalf; a special thanks to Todd Richman and  
21 Ms. Cadence Mertz whose angelic patience and sage counsel has  
22 shepherd me every step of the way through this process. Yours is  
23 a thankless job, and I seldom have been able to find the words to  
24 express my gratitude. But, from the bottom of my heart, thank  
25 you. It's been the honor of my life to have you represent me in

1 this case.

2 I would also like to address the Court to thank its many  
3 clerks, officers, those of the pretrial and Probation Office, His  
4 Honor for hearing this matter now going on 27 months since I  
5 first appeared.

6 I would also like to thank the government, Mr. Kromberg  
7 Ms. Smith, Mr. Berrang, and Special Agent Pino. I owe you all a  
8 sincere debt of gratitude. Were it not for your steadfast  
9 pursuit of justice in resolving this case, I might have given up  
10 on the belief that brought me down this path to begin with. A  
11 better world is possible.

12 To my family, I love you. To those members of the public  
13 who are present today, do not look upon me with pity. Do not  
14 worry. Have courage and take heart of hope. Though it may be a  
15 long day's journey into night, midnight is passing, and joy  
16 cometh in the morning.

17 Your Honor, the rest of this is just my speech. May I  
18 proceed?

19 THE COURT: Yes, sir.

20 THE DEFENDANT: The following is read in remembrance of  
21 those post-9/11 veterans who served honorably in the face of  
22 impossible odds. All gave some, some gave all. And a special  
23 dedication to my long lost friend, Jacob George, who, despite the  
24 bigness of his heart, could not bear the burden, the weight of  
25 having, you know, former -- I can't see -- sent to kill other

1 farmers in a foreign land. Only the dead have seen the end of  
2 war. May they forever rest in peace.

3 Your Honor, Judge Liam O'Grady, my nickname is Daniel  
4 Everett Hale. It was passed down to me by my father, to him his  
5 father's father, and so on, going back to the theologian writer  
6 Edward Everett Hale. Edward was a Massachusetts-born columnist  
7 for the Atlantic Monthly Newspaper writing about issues of  
8 abolition and slavery during the pre-Civil War era. He was also  
9 the grand nephew of revolutionary war hero Captain Nathan Hale.

10 Nathaniel, of course, is well-known for having been  
11 executed in his efforts to spy on British troop movements in  
12 support of General George Washington's rebel Army as they fought  
13 to free the states of colonial rule.

14 Denied clergy, he was given only the chance to speak his  
15 peace before left to hang three days in a public square as a  
16 warning to other would be saboteurs. It bears mentioning that  
17 under certain circumstances an act of espionage is still  
18 punishable by death in this country today.

19 The day after I pled guilty to a violation of the  
20 Espionage Act, I took a lonely cycle ride towards the capitol to  
21 clear my head in search of the statue honoring Captain Hale's  
22 sacrifice. I wish I could say that I wasn't surprised to find it  
23 located next to the John F. Kennedy Department of Justice  
24 building, but there it was, exactly where it belongs.

25 I asked a reluctant security guard to take my photo of the

1 statue of Nathan behind me, told him thank you, to which he  
2 responded with a shrug and went about his day. A short ways from  
3 there, I came to be at the Lincoln War Memorial Park. The park  
4 was alive and bustling that day with people speaking different  
5 languages coming to and fro from across the country and around  
6 the world.

7 Of the many awe-inspiring commemorative monuments  
8 surrounding the Reflecting Pool, I believe the Vietnam War  
9 Memorial to be the most striking because of its straightforward  
10 simplicity. The more than 58,000 names of every American killed  
11 in action etched into a 400-foot granite wall stands as a  
12 testament to the completion of a war and our nation's commitment  
13 to never forget the fallen.

14 By contrast, were it also to include the name of every  
15 Viet person killed, would require it to be another four miles  
16 long.

17 Curiously, there's still no monument to commemorate the  
18 end of the Iraq war. I often wonder how I will remember it, and  
19 with the draw down of troops in Afghanistan looming, I wonder how  
20 we'll remember it as well or if we intend to at all. What I  
21 remember best about Afghanistan is the endearing spirit of its  
22 people. I think of the farmers in their poppy fields whose daily  
23 harvest will give them safe passage from the warlords who will in  
24 turn trade it for weapons before it is synthesized, repackaged,  
25 and resold dozens of times, until it finds its way into this

1 country and then into the broken veins of our nation's next  
2 Opioid victim.

3 I think of the women who, despite living their entire  
4 lives never once allowed to make so much as a choice for  
5 themselves, are treated as pawns in a ruthless game politicians  
6 play when they need justification to further the killing of their  
7 sons and husbands. And I think of the children whose bright-eyed  
8 dirty faces look to the sky and hope to see clouds of gray,  
9 afraid of the clear blue days that beckon drones to come carrying  
10 eager death notes for their fathers.

11 Your Honor, Judge Liam O'Grady, I oppose drone warfare for  
12 the same reason that I oppose the death penalty. I believe  
13 capital punishment to be an abomination and an all-out assault on  
14 common decency. I believe it's wrong to kill no matter the  
15 circumstance. Yet I believe that it is especially wrong to kill  
16 the defenseless.

17 And in spite of what the Supreme Court has ruled, I  
18 believe there is simply no way in which a person can be killed  
19 that is not cruel and unusual. If anyone here is still not  
20 convinced of this, then they must ask themselves first if they  
21 believe that the four percent of death row inmates exonerated  
22 after the fact is an acceptable price to pay. I don't.

23 No person should have to die for a crime that they did not  
24 commit, just as no person should have to live with the burden of  
25 having taken a poor, defenseless, innocent life; no soldier

1 carrying out his duties nor judge theirs.

2 When it comes to the drone program, the disparity between  
3 the guilty and the innocent killed is incalculably higher. In  
4 some cases, as many as 9 out of 10 individuals killed are not  
5 identifiable.

6 In one particular instance, the American born son of a  
7 radical imam, an American imam, was assigned a Terrorist  
8 Identities Datamart Environment or TIDE Personnel Number, tracked  
9 and killed in a drone strike along with eight other members of  
10 his family as they ate lunch together a full two weeks after his  
11 father was killed.

12 Asked about why 16-year old Abdul-Rakhman, TIDE Personnel  
13 Number 26350617, needed to die, one Whitehouse [sic] official  
14 said he should have had a better father.

15 While deployed to Afghanistan, I was exposed to similar  
16 ways of thinking to distract myself from the true nature of my  
17 actions. As one drone operator put it, do you ever -- excuse  
18 me -- do you ever step on ants and never give it another thought?  
19 That's what you're made to think of the targets. They deserved  
20 it. They chose their side. You had to kill a part of your  
21 conscience to keep doing your job, ignoring the voice inside  
22 telling you this wasn't right.

23 I, too, ignored the voice inside, as I continued walking  
24 blindly towards the edge of an abyss. And when I found myself at  
25 the brink ready to give in, the voice said to me, You, who had



1     been a hunter of men are no longer. By the grace of God you've  
2     been saved. Now go forth and be a fisher of men so that others  
3     might know the truth.

4             So I ran to the press with documents in hand, not one more  
5     nor one less than necessary to dispel the demonstrable lie that  
6     said drone warfare keeps us safe, that our lives are worth more  
7     than theirs, and that only more killing would bring about certain  
8     victory.

9             Simply put, it is wrong to kill. It is specially wrong to  
10    kill the defenseless, and its an abdication of the Bill of Rights  
11    to kill without due process of law.

12            Your Honor, much has been said about the potential,  
13    serious, or exceptionally grave harm that was brought about due  
14    to my actions. But since no evidence of this fact has been  
15    materialized in all the years since my criminal investigation  
16    began, it might appear to an outsider looking in that such claims  
17    are yet another example of a boy crying wolf. But, in wishing to  
18    settle the matter myself, I might have uncovered one instance  
19    where my actions did contribute towards one of the most severely  
20    grave attacks in our nation's history.

21            At 2 a.m., July 22nd, 2016, a lone gunman entered an  
22    Orlando nightclub and proceeded to kill 49 people in what became  
23    the most deadly mass shooting in American history up until that  
24    time.

25            In a 9-1-1 call, the gunman stated, "They need to stop

1 U.S. Air strikes, okay. This went down because a lot of innocent  
2 people, women and children, are getting killed in Syria, Iraq,  
3 and Afghanistan." The gunman, Omar Mateen, was killed by police  
4 three hours after his bloody homicidal rampage began.

5 It goes without saying, Omar Mateen was a deranged  
6 homicidal lunatic who could in no way justify the killing of  
7 those 49 people that evening. Tragically, this is a story all  
8 too common in American life today. A maniac believes himself  
9 aggrieved and unheard with easy access to a gun.

10 What is unique to this case, however, is that the gunman's  
11 stated motives, though it is in no way an excuse for his heinous  
12 crimes, it is impossible to deny that air strikes in the Middle  
13 East have often dismissed innocent people as collateral damage  
14 for the safety and security of the United States.

15 When I consider my own participation in the drone program,  
16 I worry that my past actions will have given provocation to would  
17 be terrorists such as Omar Mateen to carry out their vengeful  
18 fantasies. In that sense my actions have contributed greatly to  
19 the potential harm, or to use the CIA's term, blowback.

20 I'm left to wonder, if only I had had the courage to come  
21 forward sooner with my disclosures, could I have prevented such a  
22 tragic loss of life? Of course, there's absolutely no way of  
23 absolutely knowing anything, but I wonder sometimes if Omar  
24 Mateen had seen someone accept responsibility and show remorse  
25 for their part in the war, would it have reached the part of his

1 heart that still held onto a shred of humanity. Maybe he and his  
2 49 other defenseless innocent victims would be alive today.

3 Nevertheless, I'm here to answer for my own crimes, not  
4 that of another person. It appears that I am here today to  
5 answer for the crime of stealing papers, for which I expect to  
6 spend some portion of my life in prison, but what I'm really here  
7 for is having stolen something that was never mine to take,  
8 precious human life, for which I was well-compensated and given a  
9 medal.

10 My consequential decision to share classified information  
11 about the drone program with the public was a gesture not taken  
12 lightly, nor one I would have taken at all if I believed such a  
13 decision had the possibility of harming anyone but myself. But  
14 it's because I could no longer live with myself in a world where  
15 people pretended that what's happening isn't happening. So I  
16 acted not for the sake of self-aggrandizement, but that I might  
17 some day stand before you and humbly ask for forgiveness. So  
18 please, I beg you, Your Honor, please forgive me. The taking of  
19 papers, as opposed to the lives of others, I could not, God so  
20 help me, have done otherwise.

21 It may have been that my ancestor, Captain Nathan Hale,  
22 was not a particularly good spy. And, in fact, most historians  
23 note that what he was able to provide was nothing of value in  
24 winning the war, but it is said that his defiant and courageous  
25 stance in the face of death was an example for British troops to

1 take heart and take heed of the seriousness with which Americans  
2 take their liberty and demand it at all costs.

3 Your Honor, I do not know what a proper punishment is for  
4 deterrence in this case, and in some ways I can't concede that  
5 there simply is no punishment high enough to deter Americans from  
6 doing what they feel is necessary because throughout history I've  
7 been shown time and time again there is no shortage of persons  
8 willing to sacrifice everything so others might live dignified  
9 lives in a just peace under the law, but this has been going on  
10 for seven years of my life, and it has torn me up inside.

11 I have nearly given in more times than I can count. I  
12 don't even know how I made it here. I don't want to go to  
13 prison, but I understand that crime deserves a punishment, and  
14 I'm not above the law. I only ask that you please consider that  
15 I'd like to have my life back. I would like to begin to heal  
16 again. I want to start a career. I want to be able to own a  
17 home. I want to feel like I'm part of a community, and, if I'm  
18 lucky, maybe a family.

19 Your Honor, no matter what happens today, my only regret  
20 will be that I have but this one life to give in the service of  
21 my country. I can serve it here or within prison walls. It  
22 makes no difference. Thank you, Your Honor. I beg you, please  
23 have mercy and leniency on me.

24 THE COURT: All right. Well, thank you for that. And  
25 I've read the many letters of persons who are certainly concerned

1 about your freedom, consider you to be a hero. One, that you're  
2 courageous and principled, and much of what you've done over the  
3 last number of years is just that. It is courageous and it is  
4 principled, but you're not being prosecuted for speaking out  
5 about the drone program injuring and killing innocent persons,  
6 and you're not being prosecuted for your interviews with Code  
7 Pink or the documentary or the other appearances that you've made  
8 where you've disclosed the injustice of the drone program and how  
9 morally unconscionable it is in hurting those people; you're  
10 being prosecuted, as your counsel stated, because you took a  
11 bludgeon and not a scalpel to documents that you accessed and  
12 violated your position of trust in acquiring and then  
13 disseminating to --

14 (Following discussion sealed by order of the Court.)

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 (Previously sealed discussion concluded.)

21 MR. KROMBERG: Your Honor, this would be  
22 classified information that --

23 THE COURT: I'm sorry. Is that classified?

24 MR. KROMBERG: May we approach?

25 THE COURT: That general statement? Yes, you can

1 approach.

2 (Following sidebar discussion had on the record but sealed  
3 by order of the Court:)

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 (Previously sealed discussion concluded.)

12 THE COURT: All right. Thank you. The documents that we  
13 discussed earlier this morning are all documents which are not  
14 focussed on the drone program as it relates to injuring and  
15 killing innocent persons; instead, was information that was  
16 important to national security matters way beyond the drone  
17 program, and at times completely unrelated to the drone program,  
18 but instead really put the national interests of the government  
19 in fighting terrorists organizations -- compromised it.

20 Now, we've talked about whether there was actual harm or  
21 causation -- intentional harm. Clearly the information that you  
22 imparted was important information and included national security  
23 information and would not in any way further your goal of  
24 identifying the drone program, which everyone has admitted was  
25 already known about, in a focused manner that you have discussed

1 previously and discussed today, and instead it was information  
2 harmful generally to the military and to the government and  
3 potentially could be used to defeat efforts in Afghanistan and  
4 Iraq and other locations around the world. So that is what  
5 brought you here.

6 I am just like the majority of Americans who commend you  
7 for coming forward and disclosing your personal experiences about  
8 the breadth of the drone program and the persons who were injured  
9 or killed who were innocent bystanders.

10 So that's what I consider that you have pled guilty to and  
11 that brings you here, and that's why the Guidelines are 87 to 108  
12 months, because of the seriousness of the offense. You could  
13 have been a whistleblower and garnered all this admiration  
14 without taking any of these documents, frankly, but you carefully  
15 selected these documents over a four-month period. You may not  
16 have known how important some of those documents were, but you  
17 clearly understood the importance of many of the documents. You  
18 took them over a four- or five-month period. I think you were  
19 motivated because of your conscience, but I also think that you  
20 were motivated by a desire to please the journalists who you had  
21 been meeting with and communicating with.

22 Mr. Richman, of course, thinks there's no moment to the  
23 communications that you made, but, you know, "I totally get off  
24 on being a serious journalist who covers important issues in a  
25 critical way," stating that "most journalists are super out of

1 shape and have no social life because they are so devoted, but I  
2 look up to them like rock stars, I guess to be a journalist and  
3 speak truth to power and have great sex all the time and make  
4 enough to live, but not too much that I become part of the upper  
5 crust" clearly was on your mind as you communicated with your  
6 friends about life as a journalist.

7 And I think that -- your having spent time with those  
8 journalists and their having made that impression on you, that  
9 they inspired you to obtain these documents, and then, of course,  
10 you did so, and then the journalists were presented with secret  
11 and top secret documents, and they had to know that you were  
12 facing almost certain prosecution. But they went forward with  
13 doing what they did, and this, of course, is where the  
14 intersection of the First Amendment and our freedoms and advocacy  
15 and responsible journalism cross, and it's a really difficult  
16 area, but you are facing the consequences of that today, and  
17 there were other alternatives for you. You could have resigned  
18 from the military. You could have made your objections back when  
19 you were in the Air Force and told your commanders that you  
20 weren't going to do this anymore. And I understand why you -- I  
21 think I understand, given your mental health at the time, why you  
22 did not do that, but you also could have -- as you've worked with  
23 journalists -- without the national security documents to  
24 identify the program and bring out public outrage to the  
25 community and work that way, and you chose not to do that.



1           So the crime is a serious crime, and there's no way to  
2 minimize it. So you're 33 now. You've lived a very difficult  
3 life. I was -- I don't know if you read the letter that your  
4 father wrote to me, but it is so lacking in substance or any  
5 admission of wrongdoing; some contrition, but not much more. But  
6 it didn't in any way represent the difficult upbringing that you  
7 have had. The psychological assessment clearly identifies the  
8 history of your depression and your PTSD.

9           As Mr. Richman points out, the report identifies the  
10 military's inexcusable decision to allow you to participate in a  
11 drone program, as they knew of your psychological instability.  
12 And even their tepid attempt to help you after your return to the  
13 states was a horrible injustice to you.

14           And then, of course, you suffered great anxiety and  
15 depression since you were arrested, and you've been waiting for  
16 this day for a long time. You should certainly be given credit  
17 for the amount of work that you did to raise the public's  
18 knowledge about the innocent persons being killed in this drone  
19 program. You also should be given credit in the sentence that I  
20 impose for the multi-year odyssey where you waited for indictment  
21 and then the pandemic delay as well. I know it's taken a toll on  
22 your mental health.

23           So, looking at the 3553 factors as I must, I don't think  
24 there's -- we've discussed the seriousness of the offense. I  
25 don't think there's a need to deter you personally in the future

1 from committing an offense like this because you'll never be in a  
2 position to do so, but there's a significant need to deter others  
3 from disclosing national security information, and my sentence  
4 must consider that.

5 The parties have identified past sentences and possible  
6 disparities, and I've considered and looked at closely the cases  
7 that concern the leaking of classified information versus the  
8 true espionage activities of giving information to an enemy  
9 state, and there's a lack of congruity there, but I've looked at  
10 them and considered them carefully.

11 So I don't think a Guideline sentence is necessary under  
12 the Guidelines, but I think a sentence, a substantial sentence is  
13 necessary under the 3553 factors and for the reasons I've just  
14 stated.

15 I'm going to sentence to you 45 months of incarceration,  
16 three years of supervised release, a hundred dollar special  
17 assessment. I'll not impose a fine or costs, because I find  
18 you're unable to afford them. I'll give you credit for the time  
19 you've been incarcerated awaiting sentencing.

20 As special conditions of supervised release, I'll require  
21 you to participate in a program approved by the Probation Office  
22 for substance abuse, as well as mental health treatment. I'm  
23 going to recommend that the Bureau of Prisons send you to Butner  
24 for a medical evaluation before you're designated to any other  
25 facility.

1 Do you have a request for a designation, Mr. Richman?

2 MR. RICHMAN: Just the Mid-Atlantic region, Your Honor.  
3 Just this region, Your Honor.

4 THE COURT: Northern Virginia region?

5 MR. RICHMAN: Correct.

6 THE COURT: All right. You're a young man who's got a  
7 great potential in the future. You're bright. You've told me  
8 today that you're interested in getting better and in living a  
9 life where you contribute to your community as a spokesperson,  
10 perhaps. I don't know whether you'll be involved in journalism  
11 in the future, but I certainly think that you should follow your  
12 passion and that good things will come of it. I know this is in  
13 your mind a long sentence, but I hope that it passes quickly. I  
14 hope that you make good use of the time you're at the Bureau of  
15 Prisons, whether it's involved in working on a trade for  
16 employment purposes or working on your mental health, but you  
17 have -- I hope you'll have the opportunity to do that, and I hope  
18 you'll take advantage of it, and I hope that you come out  
19 determined to live a law-abiding and active life and follow your  
20 passion, and I wish you the best, sir.

21 THE DEFENDANT: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. RICHMAN: (Shook head negatively.)

24 MR. KROMBERG: No, thank you, Your Honor.

25 MR. RICHMAN: Your Honor, the other counts are still

1 pending. We, of course, think the Speedy Trial Act has passed.  
2 We were ready to go to trial on them before and the government  
3 didn't want to. I would ask the Court to dismiss them with  
4 prejudice.

5 THE COURT: What's your position?

6 MR. KROMBERG: We have no objection to the dismissal, Your  
7 Honor.

8 THE COURT: All right. The other counts will be dismissed  
9 with prejudice, then.

10 MR. RICHMAN: Thank you, Your Honor.

11 THE COURT: All right. Thank you all for the long and  
12 hard work that you did on getting this case here to this point.  
13 All right. We're in recess.

14 (Proceedings adjourned at 12:27 p.m.)  
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C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that  
the foregoing is a correct transcript from the record of  
proceedings in the above-entitled matter.

/s/ Scott L. Wallace

12/15/21

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**Scott L. Wallace, RDR, CRR**  
**Official Court Reporter**

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**Date**